



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (BA) No.396/2025

[Vijay Gote V State of Maharashtra and another]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.L. Khapre, Senior Advocate a/b Mr. P.A. Deshpande, Advocate for
applicant.

Mr. Narale, APP for State.

Coram : Urmila Joshi-Phalke, J.

Date : 25-04-2025.

Heard.

2. The applicant came to be arrested on 11-01-2025 in connection with Crime No.63/2025 registered under Section 309(6), 3(5), 310 (2)(5), 311 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

3. The crime is registered initially on the basis of report lodged by one Vitthal Hajare on an allegation that while he was carrying the cash of Rs.1,15,00,000/- and driving a two wheeler motorcycle along with the another person namely Dnyaneshwar, he was assaulted by some unknown persons who were riding on motorcycle and he was assaulted by means of iron rod and knife and amount of cash was taken away by the assailants thereby committing a dacoity. The complainant was immediately hospitalized at Devale Hospital. On the basis of the report, Police have registered the crime against the present applicant. During investigation the involvement of the present applicant is revealed and therefore he is arrested.

4. Heard learned Senior Counsel for the applicant who submitted that during investigation it revealed that Vitthal Hajare

is the person who has hatched the conspiracy and on his instance the amount was handed over to the other co-accused. As far as the present applicant is concerned, the offence under Sections 395 and 397 of the IPC is not made out. The investigation papers shows that it was the informant himself who was involved in the said crime and offence of criminal breach of trust is made out against the co-accused Vitthal Hajare As far as the present applicant is concerned, no offence is made out under Sections 395 or 396 of the IPC. He further submitted that the investigation is already completed and chargesheet is already filed. At the most the offence would be made out as far as the abetment is concerned. For that purpose the further incarceration of the present applicant is not required. In support of his contention he placed reliance on the decisions of **Ram Shankar Singh vs State of U.P., reported in AIR 1956 SC 441, Musakhan vs State of Maharashtra, reported in AIR 1976 SC 2566, Ram Lakhan vs State of U.P., reported in 1983 CRI.L.J. 691(1), Mohammad Wajid vs State of U.P., reported in AIR 2023 SC 3784 and Ajij Khan Mohd. Khan Pathan vs State of Maharashtra, reported in 2023 SCC Online Bom 2035.**

5. *Per contra*, learned APP strongly opposed the said application and submitted that it was the informant who has hatched the conspiracy and in perusal of the said conspiracy he has carried the cash of Rs.1,15,00,000/- and created scene that when he was proceeding alongwith the cash, he was attacked and amount was looted. However, during the investigation the statement of the present applicant was recorded and the fact was discovered that the amount is lying with his brother and at the instance of the information given by the present applicant, the amount of Rs. 1,08,00,000/- was recovered from the house of the brother of the

present applicant. He also invited my attention towards the panchanama i.e. mobile seizure panchanama of the other co-accused Vitthal Hajare and from which it revealed to the investigating agency that there was various calls of the present applicant and the said Vitthal Hajare and prior to the incident also there was a call at about 12.00 pm to 12.29 pm. The CCTV footage panchanama is also drawn by the investigating agency, wherein the present applicant was seen purchasing the knife and scissor from one shop. That CCTV panchanama is also on record. Thus, he submitted that considering the material collected during the investigation is sufficiently shows the involvement of the present applicant and being a prima facie case is made out against the present applicant, the application deserves to be rejected as the huge amount is involved in the present crime. In view of that he prays for rejection of the application. As to the various decisions relied upon by the applicant is concerned, he submitted that the observations made by the Hon'ble Apex Court after full-fledged trial except in the case of Mohammad Wajid vs State of U.P. (supra).

6. On hearing both the sides and on perusal of the investigation papers it reveals that initially FIR was lodged by said Vitthal Hajare. However, during the investigation his involvement itself revealed in the said crime. It also revealed that it was the said Vitthal Hajare who has communicated with the present applicant and the other co-accused and thereafter the plot was prepared and on perusal of the said plot the amount was shown to be looted by the present applicant and other co-accused. On the basis of the statement made by the present applicant, the amount of Rs.1,08,00,000/- is recovered from the house of the brother of the present applicant. The CCTV panchanama also shows that present

applicant was seen purchasing the knife and scissor and the said CCTV panchanama is also on record. Thus, as far as the prima facie material is concerned, it shows that there is a involvement of five persons in the alleged incident. As observed by the Hon'ble Apex Court in the case of Mohammad Wajid vs State of U.P. (supra) it is held that :-

"Theft amounts to 'robbery' if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Before theft can amount to 'robbery', the offender must have voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. The second necessary ingredient is that this must be in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft. The third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to the committing of the theft or for the purpose of committing theft or for carrying away or attempting to carry away property obtained by the theft. It is not sufficient that in the transaction of committing theft, hurt, etc., had been caused. If hurt, etc., is caused at the time of the commission of the theft but for an object other than the one referred to in Section 390, IPC, theft would not amount to robbery. It is also not sufficient that hurt had been caused in the course of the same transaction as commission of the theft."

7. In view of the deviation or the interpretation laid down by the Hon'ble Apex Court if the facts of the present case is considered, the involvement of the present applicant reveals. At this stage, prima facie case is made out against the present applicant, and

therefore the application deserves to be rejected. Accordingly, I proceed to pass the following order.

8. Application is rejected.

(Urmila Joshi-Phalke, J.)